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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID TRINDADE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

REACH MEDIA GROUP, LLC, a
Delaware limited liability company,

Defendant.

REACH MEDIA GROUP, LLC, a
Delaware limited liability company,

Third-Party Plaintiff,

v.

RYAN LENAHA, individually, KYLE
DANNA, individually, and EAGLE WEB
ASSETS INC., a corporation,

Third-Party Defendants.

CASE NO 5:12-CV-04759 (PSG)

(Complaint Filed: September 12, 2012)

CLASS ACTION

**DECLARATION OF ROGER DOWD IN
SUPPORT OF OPPOSITION TO THIRD
PARTY DEFENDANT RYAN LENAHA'S
MOTION TO STRIKE CLAIMS UNDER
CAL. CIV. PROC. CODE §425.16 (ANTI-
SLAPP MOTION)**

DATE: MARCH 12, 2013
TIME: 10:00 a.m.
DEPT: COURTROOM 5, 4TH FLOOR
JUDGE: HON. PAUL SINGH GREWAL

1 I, Roger Dowd, declare as follows:

2 1. I am the founder and President and Chief Executive Officer of Reach Media
3 Group, LLC (“RMG”), defendant and third-party plaintiff in the above-referenced proceeding. I
4 oversee every aspect of RMG’s business, including the approval process for every publisher or
5 advertiser who seeks entry into RMG’s network, the process for developing the terms of the
6 advertising campaigns offered by RMG, the process of developing the unique advertisements
7 used for each advertising campaign, and the operation of RMG’s sales, accounting and human
8 resources departments. In my capacity as the President and Chief Executive Officer of RMG, I
9 am aware and apprised of emails relating to particular accounts in the ordinary course and scope
10 of my day to day responsibilities. I have personal knowledge of the facts contained herein, and if
11 called as a witness, I could and would testify competently thereto.

12 2. RMG was founded in November 2010. It is a leading performance based
13 publisher network that provides access to exclusive pay-for-performance, or cost-per-action
14 (“CPA”), campaigns for publishers seeking generous, competitive payouts. RMG assists
15 publishers in tracking their performance by providing them access to state-of-the-art online
16 reporting. Simultaneously, RMG provides advertisers with a platform for their marketing needs.
17 Specifically, RMG works with its publishers to generate actions, such as customer leads and
18 sales, on a massive scale, to ensure significant returns for its advertisers. In selecting marketing
19 campaigns for its publishers, or “affiliates”, RMG focuses on campaigns for particular industries,
20 including, but not limited to, the automotive, healthcare, financial services, and legal industries.
21 For example, if an advertiser in the automotive industry retains RMG, RMG contracts with
22 publishers to engage in a marketing campaign, using a variety of media, on behalf of that
23 advertiser.

24 3. I have been involved in the affiliate marketing industry for approximately thirteen
25 years. Through my extensive years of experience, I have developed a large and loyal network of
26 contacts within the affiliate marketing community, notably with publishers and advertisers, and I
27 have established a highly respected reputation for RMG. Through my established network of
28 contacts and RMG’s positive reputation in the affiliate network industry, I have been able to grow

1 RMG's business for the past two years. Additionally, I often attend professional conferences
2 focused on the affiliate network industry, at which I meet potential new clients, both on the
3 advertiser and publisher sides.

4 4. RMG has two offices. One office is located in New York City and the other office
5 is located in Atlanta, Georgia. RMG employs four people in its New York City office and six
6 people in its Atlanta office. Additionally, RMG employs one individual who works from home
7 remotely in Sarasota, Florida. RMG's website is available at www.reachmediagroup.com.

8 5. As a publisher network, and with respect to campaigns involving text messaging,
9 RMG enters into agreements with publishers to publish, or distribute, carefully worded and pre-
10 approved text message advertisements to individuals who have expressly agreed in advance to
11 receive these text messages. These agreements with each publisher govern the content of the
12 advertisements, the terms of payment, the nature of the relationship between RMG and the third
13 party publishers, and contain representations and warranties, among other things. To join RMG's
14 publisher network, a publisher must submit an application on RMG's website, available at
15 <http://www.reachmediagroup.com/signup>. In order to submit the application, an applicant must
16 agree that "by submitting this application, you agree to the following terms and conditions".

17 Attached hereto as **Exhibit A** is a true and correct copy of the website page:

18 <http://www.reachmediagroup.com/signup> with the above quoted language. The application is
19 then processed through LinkTrust software, used to manage affiliate information.

20 6. By submitting this application, the publisher agrees to RMG's Terms and
21 Conditions, which is located on the application page. Once a publisher's application is approved
22 by RMG, the publisher is free to select advertising campaigns to publish for from those featured
23 in RMG's network. Additionally, once the publisher's application is approved, the publisher can
24 remain in RMG's network indefinitely, even if the publisher chooses not to publish for any of the
25 campaigns offered through the network. One of the signs of the success of RMG's relationships
26 with its publishers is how frequently publishers choose to publish for campaigns offered through
27 RMG.

28

1 7. An Insertion Order is a contract which may supplement the Agreement to which a
2 publisher agrees to comply when joining RMG's network. An Insertion Order is most often
3 required to reflect a change in the price a publisher is to be paid for their services completed
4 pursuant to the Agreement, from the price RMG and the publisher agree upon when the publisher
5 initially enters RMG's network.

6 8. Advertisers seeking services through RMG, on the other hand, enter into
7 marketing and distribution agreements with RMG. These agreements govern the responsibilities
8 of RMG, payment to RMG by the advertiser, and representations and warranties, among other
9 issues. Attached hereto as **Exhibit B** is a true and correct copy of a sample marketing and
10 distribution agreement that reflects the marketing and distribution agreements used for advertisers
11 with active campaigns in 2012. It is my understanding that all publishers in RMG's network are
12 generally aware that third party advertisers have contracts with RMG for purchasing the leads
13 generated through RMG's advertising campaigns.

14 9. On or about July 11, 2012, Ryan Lenahan ("Lenahan") submitted an online
15 application and agreed to the Terms and Conditions to publish RMG's pre-approved advertising
16 message, or RMG's Creatives ("Lanahan Agreement"). Attached as **Exhibit C** is a true and
17 correct copy of an online screenshot of the Account Details for Lenahan from RMG's account
18 database, reflecting the July 11, 2012 date of the Lenahan Agreement.

19 10. On or about August 9, 2012, Kyle Danna ("Danna") submitted an online
20 application and agreed to the Terms and Conditions to publish RMG's Creatives ("Danna
21 Agreement"), as well. Attached as **Exhibit D** is a true and correct copy of an online screenshot of
22 the Account Details for Danna from RMG's account database, reflecting the August 9, 2012 date
23 of the Danna Agreement. Additionally, attached hereto as **Exhibit E** is a true and correct copy of
24 the Terms and Conditions to which Lenahan and Danna agreed to upon submitting their
25 applications to RMG. (The Terms and Conditions, the Lenahan Agreement, and the Danna
26 Agreement are collectively referenced as "Agreements".)

27 11. As part of the Agreements into which Lenahan and Danna entered with RMG,
28 Lenahan and Danna were prohibited from editing any of RMG's Creatives, "without prior written

1 approval from Reach Media Group.” (Ex. E, ¶ 4.) The Agreements specified that the Creatives
 2 include, but are not limited to, “text ads, graphic ads, from and subject line, any copy associated
 3 with the campaign including survey questions and answers.” (Ex. E, ¶ 4.) Furthermore, the
 4 Agreements stated that “[a]ny changes to [a] Creative, without prior written permission will result
 5 in the loss of payment of Leads.” (Ex. E, ¶ 4.) The Agreements further specified that Lenahan
 6 and Danna represented and warranted that all their efforts “associated with this Agreement
 7 [would] comply with the laws of the United States, and any other laws of any other jurisdictions”
 8 applicable to them. (Ex. E, ¶ 11.) Additionally, the Agreements stated that Lenahan and Danna
 9 “will not engage in or promote any illegal activities of any kind in association with this
 10 Agreement.” (Ex. E, ¶ 11.)

11 12. Upon signing up with RMG’s network, Lenahan and Danna were approved as
 12 publishers immediately, on or about July 11, 2012 and August 9, 2012, respectively. These dates
 13 are reflected in **Exhibit C** and **Exhibit D** as the dates their accounts with RMG were activated.
 14 Once their accounts were approved, Lenahan and Danna were permitted to select campaigns on
 15 RMG’s network for which they wanted to publish. Once they selected campaigns, they
 16 automatically received emails with the content of the approved Creatives for those campaigns.
 17 Attached hereto as **Exhibit F** is a true and correct copy of a template of the automated emails that
 18 are sent to publishers with approved Creatives.

19 13. Subsequently, both Lenahan and Danna signed Insertion Orders which confirmed
 20 the different advertising campaigns for which they were required to publish. On or about August
 21 9, 2012, Lenahan signed an Insertion Order (“Lenahan Insertion Order”) identifying the following
 22 campaigns for which he was required to publish text message advertisements: (1) Auto Loan
 23 Professionals, (2) Cash Advance Diamond, (3) Central Payday Advance, (4) Honest Cash Loan,
 24 (5) Huge Cash Advance, (6) Instant Cash Express, (7) Mobile Cash Source, and (8) Second
 25 Chance Cash Advance. Attached hereto as **Exhibit G** is a true and correct copy of the Lenahan
 26 Insertion Order. On or about September 4, 2012, Danna signed an Insertion Order (“Danna
 27 Insertion Order”) identifying one campaign for which he was authorized to publish text message
 28 advertisements – the Homeland Cash Advance campaign. Attached hereto as **Exhibit H** is a true

1 and correct copy of the Danna Insertion Order.

2 14. The Creatives for each of the campaigns for which Lenahan contracted to publish
3 are listed below. Attached hereto as **Exhibit I** is a true and correct copy of the approved
4 Creatives for each of these campaigns that were sent in automated emails to Lenahan.

5 **Campaign 1: Auto Loan Professionals (Mobile):**

6 **Alternative to Buy Here Pay Here Deals**

7 If you buy a car at a "buy here pay here" lot, the price will probably be less than buying a
8 car through a new car dealer. But while the price is less, the car will be older and will need
9 more in the way of maintenance and upkeep. It's not uncommon to replace brakes,
10 steering racks, exhaust systems and even entire engines in these vehicles.

11 Auto Loan Professionals is a one stop service that matches you with lenders that can help.
12 With access to over 500 programs in total there should be a program for almost every bad
13 credit low income car loans situation.

14 Get pre-approved today and save yourself time and money shopping for your next vehicle.
15 Assistance for any type of credit situation is available.

16 Click Here

17

We respect your privacy. To stop receiving messages from this sender, please follow their
18 instructions below. To stop receiving messages from AutoLoanProfessionals.com, please
19 write AutoLoanProfessionals, PO Box 707, Estero, FL 33929 or Unsubscribe

20 **Auto Loans For Bankruptcy**

21 As long as the bankruptcy is discharged, or you have an "Authorization to Incur Debt"
22 from the bankruptcy trustee Auto Loan Professionals can help match you to a lender.

23 Even if you are currently in a Chapter 13 bankruptcy you can pre-qualify and once you
24 have an "Authorization to Incur Debt" from the trustee of your bankruptcy the loan can
25 move forward.

26 Auto Loan Professionals is a one stop service that matches you with lenders that can help.
27 With access to over 500 programs in total there should be a program for almost every bad
28 credit low income car loans situation.

Get pre-approved today and save yourself time and money shopping for your next vehicle.
Assistance for any type of credit situation is available.

Click Here

We respect your privacy. To stop receiving messages from this sender,
please follow their instructions below. To stop receiving messages

-5-

1 from AutoLoanProfessionals.com, please write
2 AutoLoanProfessionals, PO Box 707, Estero, FL 33929 or Unsubscribe

3 **Car Loans for People with Bad Credit**

4 Who are the subprime car lenders? There are at least 30 national lenders that do subprime
5 and many times that number that concentrate on regional lending. With access to over 500
6 programs in total there should be a program for almost every bad credit low income car
7 loans situation

8 Auto Loan Professionals is a one stop service that matches you with lenders that can help.
9 With access to over 500 programs in total there should be a program for almost every bad
10 credit low income car loans situation.

11 Get pre-approved today and save yourself time and money shopping for your next vehicle.
12 Assistance for any type of credit situation is available.

13 Click Here

14 We respect your privacy. To stop receiving messages from this sender,
15 please follow their instructions below. To stop receiving messages
16 from AutoLoanProfessionals.com, please write AutoLoanProfessionals, PO Box 707,
17 Estero, FL 33929 or Unsubscribe

18 **Help For People Who Need High Risk Car Loans**

19 Shopping for a new vehicle can be daunting, especially if you have bad credit and need an
20 auto loan. We have been helping people who need high risk car loans for many years.

21 Auto Loan Professionals is a one stop service that matches you with lenders that can help.
22 With access to over 500 programs in total there should be a program for almost every bad
23 credit low income car loans situation.

24 Click Here

25 Get pre-approved today and save yourself time and money shopping for your next vehicle.
26 Assistance for any type of credit situation is available.

27 We respect your privacy. To stop receiving messages from this sender,
28 please follow their instructions below. To stop receiving messages
from AutoLoanProfessionals.com, please write AutoLoanProfessionals, PO Box 707,
Estero, FL 33929 or Unsubscribe

Campaign 2: Cash Advance Diamond (Mobile):

US lenders are offering cash loans up to \$1,000 deposited within 24hrs. Bad Credit OK!
Apply directly from your phone at Cash Advance Diamond. Reply STOP to opt-out

1 Get a cash loan up to \$1,000 today with a simple application you can complete on your
2 phone. Apply right now at Cash Advance Diamond. Reply STOP to opt-out

3 USA lenders have cash loans up to \$1000 deposited w/i 24hrs. No /Bad credit OK! Easy
4 & safe. Apply on your phone at Cash Advance Diamond. Reply STOP to opt-out

5 Need a loan today? Get approved for a cash loan. Complete a simple application now on
6 your mobile phone. Apply at Cash Advance Diamond. Reply STOP to opt-out

7 US lender offering \$1000 cash loan deposited within 24hrs. Easy to qualify. Bad credit
8 OK! Apply on your phone now at Cash Advance Diamond. Reply STOP to opt-out

9 Need \$1000 fast? Major US lenders offering cash loans w/i 24hrs. Apply on your phone
10 now at Cash Advance Diamond. Bad credit OK! Reply STOP to opt-out

11 **Campaign 3: Central Payday Advance (Mobile):**

12 US lenders are offering cash loans up to \$1,000 deposited within 24hrs. Bad Credit OK!
13 Apply directly from your phone at Central Payday Advance. Reply STOP to opt-out

14 Get a cash loan up to \$1,000 today with a simple application you can complete on your
15 phone. Apply right now at Central Payday Advance. Reply STOP to opt-out

16 USA lenders have cash loans up to \$1000 deposited w/i 24hrs. No/Bad credit OK! Easy &
17 safe. Apply on your phone at Central Payday Advance. Reply STOP to opt-out

18 Need a loan today? Get approved for a cash loan. Complete a simple application now on
19 your mobile phone. Apply at Central Payday Advance. Reply STOP to opt-out

20 US lender offering \$1000 cash loan deposited within 24hrs. Easy to qualify. Bad credit
21 OK! Apply on your phone now at Central Payday Advance. Reply STOP to opt-out

22 Need \$1000 fast? Major US lenders offering cash loans w/i 24hrs. Apply on your phone
23 now at Central Payday Advance. Bad credit OK! Reply STOP to opt-out

24 **Campaign 4: Honest Cash Loan (Mobile):**

25 US lenders are offering cash loans up to \$1,000 deposited within 24hrs. Bad Credit OK!
26 Apply directly from your phone at HonestCashLoan. Reply STOP to opt-out

27 Get a cash loan up to \$1,000 today with a simple application you can complete on your
28 phone. Apply right now at HonestCashLoan. Reply STOP to opt-out

USA lenders have cash loans up to \$1000 deposited w/I 24hrs. No/Bad credit OK! Easy &
safe. Apply on your phone at HonestCashLoan. Reply STOP to opt-out

1 Need a loan today? Get approved for a cash loan. Complete a simple application now on
2 your mobile phone. Apply at HonestCashLoan. Reply STOP to opt-out

3 US lender offering \$1000 cash loan deposited within 24hrs. Easy to qualify. Bad credit
4 OK! Apply on your phone now at HonestCashLoan. Reply STOP to opt-out

5 Need \$1000 fast? Major US lenders offering cash loans w/i 24hrs. Apply on your phone
6 now at HonestCashLoan. Bad credit OK! Reply STOP to opt-out

7 **Campaign 5: Huge Cash Advance (Mobile):**

8 US lenders are offering cash loans up to \$1,000 deposited within 24hrs. Bad Credit OK!
9 Apply directly from your phone at HugeCashAdvance. Reply STOP to opt-out

10 Get a cash loan up to \$1,000 today with a simple application you can complete on your
11 phone. Apply right now at HugeCashAdvance. Reply STOP to opt-out

12 USA lenders have cash loans up to \$1000 deposited w/i 24hrs. No/Bad credit OK! Easy &
13 safe. Apply on your phone at HugeCashAdvance. Reply STOP to opt-out

14 Need a loan today? Get approved for a cash loan. Complete a simple application now on
15 your mobile phone. Apply at HugeCashAdvance. Reply STOP to opt-out

16 US lender offering \$1000 cash loan deposited within 24hrs. Easy to qualify. Bad credit
17 OK! Apply on your phone now at HugeCashAdvance. Reply STOP to opt-out

18 Need \$1000 fast? Major US lenders offering cash loans w/i 24hrs. Apply on your phone
19 now at HugeCashAdvance. Bad credit OK! Reply STOP to opt-out

20 **Campaign 6: Instant Cash Express (Mobile):**

21 US lenders are offering cash loans up to \$1,000 deposited within 24hrs. Bad Credit OK!
22 Apply directly from your phone at InstantCashExpress. Reply STOP to opt-out

23 Get a cash loan up to \$1,000 today with a simple application you can complete on your
24 phone. Apply right now at InstantCashExpress. Reply STOP to opt-out

25 USA lenders have cash loans up to \$1000 deposited w/i 24hrs. No/Bad credit OK! Easy &
26 safe. Apply on your phone at InstantCashExpress. Reply STOP to opt-out

27 Need a loan today? Get approved for a cash loan. Complete a simple application now on
28 your mobile phone. Apply at InstantCashExpress. Reply STOP to opt-out

US lender offering \$1000 cash loan deposited within 24hrs. Easy to qualify. Bad credit
OK! Apply on your phone now at InstantCashExpress. Reply STOP to opt-out

1
2 Need \$1000 fast? Major US lenders offering cash loans w/i 24hrs. Apply on your phone
3 now at Instant Cash Express. Bad credit OK! Reply STOP to opt-out

4 **Campaign 7: Mobile Cash Source (Mobile):**

5 US lenders are offering cash loans up to \$1,000 deposited within 24hrs. Bad Credit OK!
6 Apply directly from your phone at Mobile Cash Source. Reply STOP to opt-out

7 Get a cash loan up to \$1,000 today with a simple application you can complete on your
8 phone. Apply right now at Mobile Cash Source. Reply STOP to opt-out

9 USA lenders have cash loans up to \$1000 deposited w/i 24hrs. No/Bad credit OK! Easy &
10 safe. Apply on your phone at Mobile Cash Source. Reply STOP to opt-out

11 Need a loan today? Get approved for a cash loan. Complete a simple application now on
12 your mobile phone. Apply at Mobile Cash Source. Reply STOP to opt-out

13 US lender offering \$1000 cash loan deposited within 24hrs. Easy to qualify. Bad credit
14 OK! Apply on your phone now at Mobile Cash Source. Reply STOP to opt-out

15 Need \$1000 fast? Major US lenders offering cash loans w/i 24hrs. Apply on your phone
16 now at Mobile Cash Source. Bad credit OK! Reply STOP to opt-out

17 **Campaign 8: Second Chance Cash Advance (Mobile):**

18 US lenders are offering cash loans up to \$1,000 deposited within 24hrs. Bad Credit OK!
19 Apply directly from your phone at Second Chance Cash Advance. Reply STOP to opt-out

20 Get a cash loan up to \$1,000 today with a simple application you can complete on your
21 phone. Apply right now at Second Chance Cash Advance. Reply STOP to opt-out

22 USA lenders have cash loans up to \$1000 deposited w/i 24hrs. No/Bad credit OK! Easy &
23 safe. Apply on your phone at Second Chance Cash Advance. Reply STOP to opt-out

24 Need a loan today? Get approved for a cash loan. Complete a simple application now on
25 your mobile phone. Apply at Second Chance Cash Advance. Reply STOP to opt-out

26 US lender offering \$1000 cash loan deposited within 24hrs. Easy to qualify. Bad credit
27 OK! Apply on your phone now at Second Chance Cash Advance. Reply STOP to opt-out

28 Need \$1000 fast? Major US lenders offering cash loans w/i 24hrs. Apply on your phone
now at Second Chance Cash Advance. Bad credit OK! Reply STOP to opt-out

1 15. The Creatives for the one campaign for which Danna contracted to publish are
 2 listed below. Attached hereto as **Exhibit J** is a true and correct copy of the approved Creatives
 3 for this campaign that was sent in an automated email to Danna. The Creatives for the Homeland
 4 Cash Advance (SMS Only Short Form) campaign for which Danna contracted to publish were the
 5 following:

6 US lenders are offering cash loans up to \$1,000 deposited within 24hrs. Bad Credit OK!
 7 Apply directly from your phone at Homeland Cash Advance. Reply STOP to opt-out

8 Get a cash loan up to \$1,000 today with a simple application you can complete on your
 9 phone. Apply right now at Homeland Cash Advance. Reply STOP to opt-out

10 USA lenders have cash loans up to \$1000 deposited w/i 24hrs. No/Bad credit OK! Easy &
 11 safe. Apply on your phone at Homeland Cash Advance. Reply STOP to opt-out

12 Need a loan today? Get approved for a cash loan. Complete a simple application now on
 13 your mobile phone. Apply at Homeland Cash Advance. Reply STOP to opt-out

14 US lender offering \$1000 cash loan deposited within 24hrs. Easy to qualify. Bad credit
 15 OK! Apply on your phone now at Homeland Cash Advance. Reply STOP to opt-out

16 Need \$1000 fast? Major US lenders offering cash loans w/i 24hrs. Apply on your phone
 17 now at Homeland Cash Advance. Bad credit OK! Reply STOP to opt-out

18 16. Additionally, under my direction, Lenahan and Danna received special instructions
 19 regarding the text message advertisements they were required to send. Those instructions
 20 specified, among other things, that bank names, amounts over \$1000, and “cash in 2 hours” were
 21 not permitted in the text messages. Furthermore, those instructions specified that the text
 22 message advertisements must have included opt-out language. Attached hereto as **Exhibit K** is a
 23 true and correct copy of the screenshot of special instructions that were provided to Lenahan and
 24 Danna under my direction.

25 17. Additionally, under my direction, one of RMG’s former employees, Andre Zouvi,
 26 emailed Danna on or about September 5, 2012 reiterating the specific instructions regarding the
 27 Creatives Danna was required to send. That email specified that Danna was not permitted to use
 28

1 bank names, amounts over \$1000, the phrase “no credit checks”, or the phrase “cash in 2 hours.”
2 Attached hereto as **Exhibit L** is a true and correct copy of the email exchange between Mr. Zouvi
3 and Danna.

4 18. Some time after July 21, 2012, I began receiving complaints from recipients of
5 unsolicited text messages and became aware of complaints received by RMG’s employees
6 purportedly sent on RMG’s behalf. At least two complaints of which I became aware were
7 regarding text messages that stated:

8 Chase is offering \$1500 cash loans deposited within 2hrs. NO credit checks or
9 faxing! Get the money today by applying right now on your phone at
CashIn2Hrs.com

10 Chase is offering \$1,500 cash loans deposited within 2hrs. NO credit checks!
11 Get the money today by applying right now directly on your phone at
12 CashIn2Hrs.com

13 Attached hereto as **Exhibit M** is a true and correct copy of an email I became aware of sent to
14 one of RMG’s former sales employees in which the author complained of receiving the former
15 text message. Attached hereto as **Exhibit N** is a true and correct copy of a screen shot of a text
16 message another recipient sent to me complaining of the latter text message.

17 19. I subsequently received other complaints from recipients of text messages
18 purportedly sent on RMG’s behalf. The recipients stated that they never provided prior express
19 consent to receive these text messages.

20 20. After receiving these complaints, I personally spoke with Lenahan. During my
21 first conversation with Lenahan after receiving these complaints, I notified Lenahan of the
22 complaints. Lenahan conceded to me both (a) that he had sent text messages with links to non-
23 RMG websites that re-directed to RMG-affiliated websites and (b) that the content of his text
24 messages did not match the content of the approved Creatives for his campaigns. I told Lenahan
25 that because he had sent unauthorized text messages that did not comply with the terms of the
26 Agreement, he was not entitled to payment under the Lenahan Agreement. I further demanded
27 that Lenahan cease sending unauthorized text messages with links to non-RMG websites that re-

1 directed to RMG-affiliated websites.

2 21. After this conversation with Lenahan, I received more complaints regarding
3 unsolicited text messages from their recipients. I personally spoke with Lenahan again and
4 demanded that Lenahan cease sending text messages that were not compliant with the terms of
5 the Lenahan Agreement and in violation of the law, that he provide to me the OPTIN information
6 Lenahan used to determine the recipients of his text messages, that he ensure all of his marketing
7 efforts were compliant with the CAN-SPAM Act of 2003, and that he ensure that he was
8 following best practices with regard to publication of advertisements.

9 22. I never received from Lenahan the OPTIN information or certification from him
10 that his marketing efforts were compliant with the CAN-SPAM Act of 2003 and in accord with
11 best practices for publication of advertisements.

12 23. On or about August 25, 2012, I received an email from one of RMG's former
13 employees, Luciano Castro, stating a proposed text message advertisement:

14
15 US lenders are offering cash loans up to \$1,000 deposited within 24hrs. BAD CREDIT
16 OK! Secure the money today by applying now on your phone at www.bit.ly/B2eW4

17 The link www.bit.ly/B2eW4 was supposed to route the recipient to a website directly controlled
18 by RMG, and not to an intermediary site that would re-direct the recipient to an RMG website. I
19 scrolled down the email chain and read the originating email from August 24, 2012, which was
20 sent by RMG's Chief Operating Officer, Rick Hoeye, to 951ryan@gmail.com, which I
21 understood to be Lenahan's email address. Attached hereto as **Exhibit O** is a true and correct
22 copy of this email chain commencing on or about August 24, 2012.

23 24. Subsequently, I approved the use of the proposed text message advertisement
24 presented by Mr. Castro in the August 25, 2012 email. (**Ex. O.**)

25 25. Some time on or about August 25, 2012 or August 26, 2012, I received another
26 complaint regarding an unsolicited text message advertisement.

27 26. On or about August 26, 2012, I personally authorized the official suspension of
28 Lenahan as an RMG publisher because Lenahan admitted to me that he altered the content of the

1 approved Creatives for the campaigns he contracted to publish for without prior written approval
2 from RMG. I also personally informed RMG's Accounting department to withhold payment to
3 Lenahan because he failed to comply with the terms of the Lenahan Agreement.

4 27. Subsequently, on or about September 6, 2012, I personally spoke with Lenahan
5 again. I reminded him that he was suspended as an RMG publisher as a result of his
6 noncompliance with the Lenahan Agreement and that I was very upset by his noncompliance.

7 28. A day later, on or about September 7, 2012, I received an email from Lenahan. In
8 that email, Lenahan wrote, among other things, that (1) he understood that I was "very upset over
9 all the issues" his text messages had created for me; (2) acknowledged that he and Danna had sent
10 text messages purportedly on RMG's behalf that had the name "Chase" in it; (3) acknowledged
11 that I provided Lenahan with two warnings, with the second and final warning on or about August
12 25, 2012; (4) acknowledged that complaints I received after August 25, 2012 could have been the
13 result of text messages he, Danna, or another affiliate sent; and (5) stated that he was open to
14 negotiating a deduction from his claimed invoice of \$12,298 "to cover [my] time dealing with
15 this." Attached hereto as **Exhibit P** is a true and correct copy of the September 7, 2012 email I
16 received from Lenahan.

17 29. On or about September 11, 2012, I personally authorized the official suspension of
18 Danna as an RMG publisher.

19 30. On or about September 12, 2012, I received a Class Action Complaint filed in this
20 matter against RMG, alleging that RMG violated the TCPA by sending, or having sent on its
21 behalf, unsolicited text message advertisements to Plaintiff's and purported class members' cell
22 phones. Specifically, Plaintiff alleged that the text message advertisements were sent without the
23 prior express consent of their recipients, in violation of the TCPA. The text messages identified
24 in the Class Action Complaint are the following:

25 Lenders offering \$1,500 cash loans deposited within 2hrs. NO credit checks! Get money
26 today by applying right now directly on your phone at www.TwoHourCash.com

27 Chase is offering \$1500 cash loans deposited within 2hrs. NO credit checks! Get the
28 money today by applying right now directly on your phone at CashIn2Hrs.com

1 Chase is offering \$1500 cash loans deposited within 2hrs. NO credit checks! Get
2 the money today by applying right now on your phone at www.TwoHourCash.org

3 Chase is offering \$1500 cash loans deposited within 2hrs. NO credit checks or
4 faxing! Get the money today by applying right now on your phone at TwoHourCash.net

5 Chase is offering \$1,500 cash loans deposited within 2hrs. NO credit checks! Get the
6 money today by applying right now on your phone at www.TwoHourCash.org.

7 Wells Fargo: Get up to \$1500 deposited into your account today. Not a scam & bad credit
8 ok. Apply from your phone at bit.ly/NmCRO0 now. Instant approval.

9 Plaintiff alleged that the websites CashIn2Hrs.com, TwoHourCash.net, www.TwoHourCash.org
10 and the link bit.ly/NmCRO0 all lead directly to RMG-owned and/or operated websites, including
11 CashAdvanceDiamond.com and MobileCashSource.com.

12 31. None of RMG's pre-approved Creatives for its campaigns included the text
13 message advertisements identified in the Class Action Complaint against RMG. (**Exs. I and J.**)

14 32. On or about September 19, 2012, I received an email from Mr. Hoeye, forwarding
15 another email sent from Lenahan to Mr. Hoeye that same day. In Lenahan's email, he stated that
16 Danna was "doing the exact same thing as me, word for word" Additionally, instant message
17 statements by Danna were embedded in the email, ending with "I will be glad to help you testify
18 in court when the time comes, the fact that they paid me and not you is really going to hurt them
19 in court." Because Lenahan had previously conceded to me that text messages he sent purportedly
20 on RMG's behalf were not in compliance with any of RMG's Creatives, I understood from the
21 September 19, 2012 email from Lenahan to Mr. Hoeye that Danna sent text messages not in
22 compliance with RMG's Creatives, as well. Attached hereto as **Exhibit Q** is a true and correct
23 copy of the September 19, 2012 email I received from Mr. Hoeye.

24 33. Subsequently, I personally informed RMG's Accounting department to withhold
25 payment to Danna on or about September 19, 2012 because he had not complied with the terms of
26 his Agreement with RMG. I became aware that a bank wire had already been issued to Danna's
27 bank account the day before, that the clearing house had received the wire, and that the receiving
28 bank had not yet received it. I personally instructed one of RMG's employees in the Accounting
department, Patricia Hurst, to inform the receiving bank that the wire had been sent without

1 authorization. Upon information and belief, I understand that Ms. Hurst then communicated to an
 2 employee of the receiving bank on or about September 19, 2012 that the wire had been sent
 3 without authorization. I was never informed by the bank that Danna attempted to dispute the stop
 4 status placed on the wire.

5 34. Because Lenahan conceded to me that he had sent text message advertisements
 6 that were not in compliance with the approved Creatives for any of RMG's advertising campaigns
 7 and I understood that Danna sent text messages identical to those that Lenahan sent, I was
 8 required to, on behalf of RMG, reimburse the advertisers associated with those campaigns the
 9 fees they had paid RMG.

10 35. On or about September 28, 2012, I received an email from "Ryan Lenahan"
 11 addressed to "Internet-Advertising – People Who Don't Pay." The email contained two
 12 comments by the individual "Ryan Lenahan", made two minutes apart from one another. The
 13 first comment was:

14 Roger Dowd from Reach Media group owes me \$13,000 and forcing me to hire
 15 Harrison Gevirtz to take them to court. I'm also aware that they owe another
 16 network \$xx,xxx in addition to another affiliate they owe \$xx,xxx. Roger claims
 17 we were using "unapproved" sms content however I have countless emails, skype
 18 transcripts....etc where he told me to use his exact word for word message on my
 19 marketing materials or else risk non payment, which I did under threat and now
 20 hes claiming tis unapproved BS story.

21 The second comment, written only two minutes later, stated:

22 Roger Dowd sent a 14k wire to my partner whom was using the very same sms
 23 content, then 3 days later contacted the bank and pretended the wire they sent was
 24 fraud in attempts to get it reversed. Luckily a signed IO, invoice, emails,
 25 transcripts...etc got the bank to realize it was a BS story and stopped the
 26 fraudulent reversal.

27 Attached hereto as **Exhibit R** is a true and correct copy of the September 28, 2012 email
 28 I received.

36. The reference to my name in the first sentence "Roger Dowd from Reach Media
 group owes me \$13,000 and forcing me to hire Harrison Gevirtz to take them to court" is linked

1 to my personal Facebook page.

2 37. I authorized RMG's counsel, DLA Piper LLP (US), to send a cease and desist
3 letter to Lenahan, demanding that he cease and desist from this conduct and from engaging in
4 further unlawful conduct directed at me or RMG, and that he confirm his compliance with these
5 demands in writing to the offices of DLA Piper LLP (US). I never received any confirmation in
6 writing or otherwise from Lenahan.

7 38. Subsequently, on or about November 4, 2012, I received another email from
8 "Ryan Lenahan" addressed to "Internet Advertising – People Who Don't Pay," which included a
9 third comment from an individual named "Ryan Lenahan" stating "Just an update, over 3 months
10 have passed and have still not seen a dime." The email also showed two comments by
11 individuals to Lenahan's September 28, 2012 posts about Dowd and RMG. They said "Good to
12 know, thanks for the heads up" and "oh my. . . not going near that network." Attached hereto as
13 **Exhibit S** is a true and correct copy of the November 4, 2012 email I received.

14 39. As a result of Lenahan's Facebook postings about me and RMG, my reputation in
15 the affiliate networking industry and that of RMG have been severely damaged. I received
16 notification from employees of RMG that one of RMG's largest clients saw the second Facebook
17 comment posted by Lenahan and now requires prepayment or a personal guarantee from RMG as
18 a condition to engaging with RMG on campaigns. Additionally, I received notification from
19 employees of RMG that the Chief Financial Officer of another affiliate in RMG's network saw
20 the Facebook posts and now seeks an explanation and that other affiliates in RMG's network
21 have expressed concern about receiving payment from RMG.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct to the best of my knowledge and that this Declaration was executed
3 on February 2, 2013, at Atlanta, Georgia.

4 
5 Roger Dowd

6
7
8
9 ATTESTATION OF CONCURRENCE IN FILING

10 Pursuant to the General Order No. 45, Section X(B), of the United States District Court
11 for the Northern District of California, I, Vishali Singal, hereby attest that the concurrence in the
12 filing of this Declaration of Roger Dowd in Support of Third-Party Plaintiff Reach Media Group,
13 LLC's Opposition to Motion to Strike Claims Under Cal. Code of Civ. Proc. § 425.16 (Anti-
14 SLAPP Motion) has been obtained from Roger Dowd who has provided the conformed signature
15 above.

16
17 Dated: February 2, 2013

DLA PIPER LLP (US)

18
19 By: 
VISHALI SINGAL

20 Attorneys for Defendant and
21 Third-Party Plaintiff Reach Media Group, LLC
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